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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,365	11/01/2001	James Lynn Baratuci	TRUSP0105USA	7294
6449	7590	06/09/2005	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,365

Applicant(s)

BARATUCI ET AL.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-32 is/are allowed.
- 6) ☒ Claim(s) 1-16 and 33-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/23/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 11, 14, 33, 34, 37-44, 48, 49, 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,349,988 to Walsh et al. as in the previous office action.

Regarding claims 1, 11 and 38, Walsh discloses a flexible hollow spacer (fig. 1: 30) having a repeating pattern along the longitudinal axis, and an adhesive sealant (column 5, lines 1-6).

Regarding claims 2, 3, 39 and 40, Walsh discloses the spacer as having a varying cross sectional area.

Regarding claims 4 and 41, Walsh discloses the spacer as being a tube.

Regarding claims 5 and 42, Walsh discloses the use of a vapor barrier (fig. 2: 14) joined to the adhesive sealant.

Regarding claim 6 and 43, Walsh discloses the tube as having at least two opposing sides (fig. 1: see left side, right side not in shown).

Regarding claims 7, 14 and 44, Walsh discloses the assembly as being inherently coilable.

Regarding claims 33 and 48, Walsh discloses ribs on the tube which surround the spacer axis.

Regarding claims 34 and 49, Walsh discloses the tube as having an outer portion which lacks ribs (fig. 4: 38).

Regarding claims 37, 52 and 53 Walsh discloses the ribs as having a varying thickness (fig. 1: see end rib 30 thinner than ribs 20).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10, 15, 16 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,349,988 to Walsh et al. in view of U.S. Patent No. 4,487,707 to Holzkecht as in the previous office action.

Regarding claims 8, 9, 10, 15, 16, 45, 46 and 47, Walsh discloses a moisture resistant layer and the need to prevent the ingress of moisture (abstract) but does not specifically disclose the use of a desiccant layer. Holzkecht discloses a refrigeration tube using a desiccant layer (fig. 3: 36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walsh by using a dessicant layer adjacent to the tube in order to prevent the flow of moisture.

Claims 12, 13, 35, 36, 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,349,988 to Walsh et al. in view of U.S. Patent No. 5,799,703 to Kanao et al. as in the previous office action.

Regarding claims 12, 35, 36, 50 and 51, Walsh discloses the basic claim limitations of the instant application but does not disclose the use of rectangular tubing. Kanao discloses the use of rectangular tubing (fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walsh by using rectangular tubing as disclosed by Kanao, in order to fit better between particular surface and through grommets.

Regarding claim 13, Walsh discloses the tube as being ribbed on a first surface (28) a second surface (30) and an exterior surface (20).

Allowable Subject Matter

Claims 17-32 are allowed as in the previous office action.

Response to Arguments

Applicant's arguments filed 3/23/05 have been fully considered but they are not persuasive. Applicant argues that the prior art used in the previous rejection is non analogous art. However, applicant should note that the claims are drawn to a spacer. The spacer of the applicant is defined by the structure claimed and not its function. The

prior art used in the previous office action is drawn to a spacer, as defined by it's limitations, which meets the basic claim limitations as those of the instant application.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK


Basil Katcheves

6/6/05

Primary Examiner, AU 3635